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Review of the efficiency of the administrative and financial functioning of the United Nations

Human resources management

Management irregularities causing financial losses to the Organization

Report of the Secretary-General

Summary

The present report is prepared in response to General Assembly decision 51/469 B, subparagraph (b), in which the Assembly requested the Secretary-General to submit to it at its fifty-third session a report on "the follow-up of management irregularities causing financial losses to the Organization, as indicated by the Office of Internal Oversight Services".

The report provides an overview of the meaning of management irregularities causing financial losses to the Organization, distinguishes between the different categories of such irregularities and sets out the applicable procedures for disciplinary actions and recovery.

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I. Introduction

1. The Secretary-General understands that the meaning of "management irregularities" causing financial losses to the Organization, referred to in General Assembly resolution 51/469 B, subparagraph (b), covers those irregularities that result from fraudulent conduct, gross negligence or wilful disregard of the prescribed rules, regulations and policies of the Organization. In such cases, the Organization makes every possible effort to recover the losses incurred as a result of such actions. In addition, this definition includes actions committed not only by managers but also by any other staff member.

II. Applicable statutory provisions

2. All staff, whether they discharge managerial functions or not, are subject to financial rule 114.1 and staff rule 112.3, which provide the statutory regime for the recovery of financial losses caused to the Organization, and to staff regulation 10.2, which provides for disciplinary measures that may be taken in cases of misconduct.

- Financial rule 114.1 states that: "Every official of the United Nations is responsible to the Secretary-General for the regularity of the actions taken by him or her in the course of his or her official duties. Any official who takes any action contrary to these Financial Rules, or to the administrative instructions issued in connection therewith, may be held personally responsible and financially liable for the consequence of such action."
- Staff rule 112.3, states that: "Any staff member may be required to reimburse the United Nations either partially or in full for any financial loss suffered by the United Nations as a result of the staff member's negligence or of his or her having violated any regulation, rule or administrative instruction."
- Staff regulation 10.2 states that: "The Secretary-General may impose disciplinary measures on staff members whose conduct is unsatisfactory. He may summarily dismiss a member of the staff for serious misconduct."

3. As part of his reform efforts, the Secretary-General has also promulgated Secretary-General's bulletin ST/SGB/1998/19, entitled "Status, basic rights and duties of United Nations staff members" to further guide staff members in the execution of their duties.

III. Actions that may lead to financial losses

4. Actions leading to financial losses may be categorized under the following three broad headings:

(a) Instances where losses result from an inadvertent error, oversight or simple negligence or inability to foresee the negative consequences of the chosen course of action (hereinafter referred to as "mistakes");

(b) Instances where the losses result from gross negligence or an intentional disregard of pertinent regulations or rules or administrative instructions or established policy, or from the wilful failure to observe prescribed standards of conduct (hereinafter referred to as "gross negligence");

(c) Instances where the losses are attributable to fraud.

A. Losses due to mistakes

5. In regard to losses resulting from the instances referred to in paragraph 4 (a), the Secretary-General recognizes that it would be unrealistic to expect managers to exercise perfect judgement at all times, especially in a fluid and stressful environment. It is clear that staff and managers will at times make mistakes and it is not appropriate that they become the Organization's insurer against mistakes. Decisions made under pressure of time or other exigencies cannot always be optimal and are always liable to criticism in hindsight. In the final analysis, it is always possible to chart a better course of action, reconstruct more cost-effective options and indicate more resource-saving arrangements. It should be acknowledged that in most circumstances a manager does not always have an opportunity to explore and analyse all conceivable options. Moreover, mistakes can occur even when he or she acts in good faith and with due diligence.

6. The Secretary-General is of the view that in these cases, it would be counterproductive to seek recovery for financial losses resulting from such instances, irrespective of whether the losses are real or construed as savings forgone. The threat of recovery for each and every managerial mistake would stifle initiative, make managers adverse to taking calculated risks when situations so require, and create a culture where procrastination is considered more prudent than decisive and timely action. Thus, focusing primarily on penalties or restitution in cases of loss from managerial mistakes in the absence of gross negligence or wilful misconduct is not likely to ensure overall programme effectiveness and will produce the unintended and undesired results of inhibiting motivation and appropriate initiative.

7. In view of the above considerations, the remedial actions for such instances belong in the area of performance management. The focus should be on training and support of staff to ensure that they are better equipped in the future to deal with similar situations. Mistakes made, or inability to exercise effective management, should be reflected in Performance Appraisal System reports and have appropriate repercussions for the staff member's career. Effective performance management will act for the benefit of the Organization by ensuring that staff feel confident that they will not be unfairly penalized for taking actions in what they believe to be the best interests of the Organization. In this connection, the implementation of the Performance Appraisal System, which provides for a constant and timely performance assessment of each individual staff member, is regarded as an effective management tool. To contemplate actions beyond this course of action would, in the opinion of the Secretary-General, impede rather than further the management culture conducive to effective operations.

B. Losses due to gross negligence

8. Where losses result from instances of gross negligence or intentional disregard of pertinent regulations or rules or administrative instructions, or the wilful failure to observe prescribed standards of conduct, as referred to in paragraph 4 (b) above, disciplinary action may be taken in accordance with article X of the Staff Regulations and chapter X of the Staff Rules, in addition to efforts to obtain recovery of such losses. In this connection, procedures need to be established for determining (i) whether there was "gross negligence" in a specific instance and (ii) what financial responsibility, if any, should be incurred by those who have committed "gross negligence".

C. Losses due to fraud

9. Finally, in instances of losses due to fraud, which is regarded as a gross violation of the standards of integrity expected of an international civil servant, the staff member may be summarily dismissed if the misconduct is patent, or may be subject to other disciplinary action, in addition to the Organization's efforts to obtain full recovery of the fraudulently misappropriated funds. This is the consistent disciplinary practice of the Organization in fraud cases. In addition, a determination is made whether to involve the assistance of law enforcement authorities at the national level if circumstances so require. Depending on the specific facts of the case, an assessment is made on the nature of the misconduct as well as on the nature and extent of the Organization's involvement in assisting such law enforcement authorities to pursue the case, with due regard to the Organization's privileges and immunities. In this connection, it should be noted that a staff member's misconduct may not necessarily correspond to the definitions of criminal offences found in different national legal systems. Even if the case results in the summary dismissal of a staff member, the evidence may not be sufficient to satisfy the standard of proof applicable in criminal matters considered by national courts. In addition, the Secretary-General has to determine whether the amounts that the Organization can reasonably expect to recover are commensurate with the cost of the Organization's involvement in national legal proceedings.

IV. Summary of applicable disciplinary procedures

10. Instances of actions leading to financial losses may be discovered by a department, a mission, the Board of Auditors or the Office of Internal Oversight Services through audits, management inspections and/or other forms of disclosure. Upon determination of sufficient prima facie evidence that such wrongdoing has occurred and been reported to the Controller, it may be referred by the department head/responsible officer to the Assistant Secretary-General for Human Resources Management for appropriate disciplinary action in accordance with administrative instruction ST/AI/371. Once received by the Office of Human Resources Management, the case is handled in accordance with administrative instruction ST/AI/371, whose provisions ensure that procedural requirements and the due process rights of the staff member are respected.

11. In cases where the evidence is patent and leaves no doubt that serious misconduct or fraud has occurred (e.g., when the staff member admits to the fraud), the staff member is summarily dismissed. In such cases, he or she loses the termination indemnity and repatriation grant that would otherwise have accrued to his/her benefit on separation.

12. If the matter is referred to a Joint Disciplinary Committee, and the Committee establishes that misconduct has occurred, any of the disciplinary measures specified in chapter X of the Staff Rules may be recommended. Those measures are set out in staff rule 110.3 and may be one or more of the following: written censure; loss of one or more steps-in-grade; deferment, for a specified period, of eligibility for within-grade increment; suspension without pay; fine; demotion; separation from service, with or without notice or compensation in lieu thereof; summary dismissal. The Under-Secretary-General for Management may then decide, on behalf of the Secretary-General, what disciplinary measure(s) to impose.

V. Summary of applicable recovery procedures

13. In all cases where the Secretary-General establishes that losses incurred by the Organization are recoverable from the staff member, action will be taken immediately, in accordance with the provisions of staff rule 103.18 (b) (ii), which permits deductions from salary for "indebtedness to the United Nations", to recover as much as possible of the amounts involved from any accrued salary and other emoluments, including termination payments, of the staff member. Virtually all cases of recovery are achieved in this manner.

14. Moreover, if disciplinary action is pursued, the staff member may be placed on suspension without pay pending investigation and disciplinary action under chapter X of the Staff Rules. Such suspension may be an effective safeguard against the risk of further loss to the Organization, which may not be able to recover misappropriated funds at a later stage.

15. The decision to effect recovery is an administrative decision that can be appealed by the staff member through the internal appeals process. After consideration by the Joint Appeals Board, the Secretary-General reviews the decision in the light of the Board's recommendation and decides whether to maintain it or change it in any way. If the staff member is not satisfied with the Secretary-General's decision, he or she may then take the case to the Administrative Tribunal. In cases where the amounts recovered from accrued salary and other emoluments are insufficient to compensate the United Nations fully for losses resulting from wrongdoing of staff, the Organization has no other internal means for obtaining a full recovery of the residual indebtedness from the staff member concerned.

16. In such circumstances, in addition to recovery action taken within the United Nations, it may be appropriate to refer the case to national authorities with a view to recovering the full amount of such indebtedness to the Organization or obtaining compensation for damages sustained by it. However, as has been reported previously,[1] the United Nations would have to seek the assistance of outside counsel and the legal proceedings instituted on its behalf would be, *inter alia*, subject to the national provisions on procedure. It should also be noted that, in addition to the difficulties that the national courts might find for establishing the alleged wrongdoing, particularly when it consisted in the violation or circumvention of internal regulations and rules of the United Nations, the amounts that the Organization can reasonably expect to recover are often not commensurate with the cost entailed in such proceedings.

VI. Reporting procedures

17. For the most recent period for which information has been compiled, the Office of Internal Oversight Services reports[2] that from 1 July 1997 to 30 June 1998 total recoveries amounted to $6 million out of a potential amount of $10.3 million (58 per cent) to be recovered. Out of this total $0.1 million related to recoveries from fraudulent instances (100 per cent). As part of its regular account of activities, the Office provides detailed information

on the particulars of each case. The Board of Auditors, in its financial report and audited financial statement[3] also provides information regarding cases of fraud and presumptive fraud, including information regarding the size of losses, recovery and disciplinary actions.

Notes

[1] See the comprehensive overview by the Secretariat of the jurisdictional and procedural mechanisms that exist in the United Nations to address alleged cases of fraud (A/AC.243/1994/L.3), para. 57.

[2] A/53/428, annex.

[3] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 5* (A/53/5), vol. I.